

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

May 11, 2012

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT: AMENDMENT NO. 3 AND EXTENSION OF TIMBER LAND  
LICENSE NO. 2007-H-01 HELD BY HAWAII ISLAND  
HARDWOODS, LLC.

This board submittal requests approval of Amendment No. 3 to and an extension of Timber Land License No. 2007-H-01 held by Hawaii Island Hardwood, LLC.

**BACKGROUND**

At the June 22, 2007 meeting under item C-2, the Board approved issuance of a Timber Land License to Hawaii Island Hardwoods, LLC (HIH) for timber resources within the Waiakea Timber Management Area (WTMA) on Hawaii Island, in support of HIH utilization of timber resources in WTMA and establishing a state-of-the-art, medium sized sawmill facility. Timber Land License No. 2007-H-01 ("License" - Exhibit A), was fully executed on September 10, 2007. License terms included details for four phases of development, a condition that harvesting within the licensed WTMA timber stands be initiated within 28 calendar days of License execution, specifications for mill size/capacity and others. HIH initiated harvesting within the designated time frame during the period of October to December 2007, but has not conducted harvesting operations in the License area since that time.

The Department considered and approved this License for many objectives, some of which included: promotion of local forest industry processing to provide products for the Hawaii Market; providing a steady revenue stream to the Department; and fostering the establishment of a state-of-the-art sawmill with considerably larger processing capacity than any other existing operation in the State.

Upon request from HIH and approval of the Board, the License was amended on December 10, 2008, by extending all of the deadlines in Table 2 for Phases II and III. Additionally, based on two subsequent letters received from HIH, dated July 23, 2009, and September 15, 2009, the License was again amended (Exhibit B), as of December 14, 2009, to further extend the

deadlines and requirements for Phases II, III and IV (as described in the Table 2 amended below) as well as to decrease the amount of the bond obligation from \$250,000 to \$50,000.

Table 2. Licensee sawmill development schedule (amended).

Item	Phase	Time Period
Band or circle head saw	II	24 months
Planer	II	36 months
Straight line rip saw	II	36 months
End trimming chop saw	II	36 months
Four-side planer	II	36 months
Dry kiln capacity to accommodate 1,000,000 BF/yr	III	48 months
Sorting line	III	48 months
Stacking machine	III	48 months
Two-saw, dual laser board edger	IV	60+ months
Dry kiln capacity to accommodate 5,000,000 BF/yr	IV	60+ months
Traveling carriage head saw	IV	60+ months

Per the terms in the License, HIH has an option to extend the License at year four (4) for an additional five (5) years at the end of the License. As this is the fourth year of the License, HIH has requested an extension for an additional five years to continue their efforts under the license. Additionally, HIH has requested that the progress made under their license be tied to the development of a market for wood products versus develop of infrastructure for processing materials, as detailed in the letter dated April 23, 2012 (Exhibit C).

## DISCUSSION

Overall, the progress of the License have been mixed. Though harvesting was initiated immediately after License execution in September 2007, there has not been a subsequent stream of harvesting and associated revenue generation for the Department since approximately February 2008. HIH indicated a plan to re-initiate harvesting in the License area in 2009; however, due to the ongoing recession harvesting was not conducted. HIH has incrementally increased their mill equipment inventory and mill capacity, but has not met many of the extended deadlines for Phase II, Phase III or overall milling capacity. HIH has relocated from their original site, is still exhibiting growth and has met some of the requirements of the License. The mill development and schedule proposed by HIH, however, is too ambitious in light of the slow economic recovery. HIH is still working on establishing markets for local wood products in Hawaii and elsewhere. They have recently experienced an increase in demand and anticipate a need to expand their current milling operation and associated processing capacity.

The Division and HIH have been in discussions regarding a potential License extension and their process on completing the milestones in their License since September 2011. The Division believes that HIH is actively working towards expanding the Hawaiian wood products market and is supportive of a continued partnership with HIH. The Division recommends a license extension of three (3) years with an option to renew for an additional two (2) years if HIH is able to show accomplishments and progress under the license. Further, the Division recommends

additional performance conditions be incorporated into the License to ensure that HIH meets the established milestones under the License in a timely manner.

As with similar conditions placed on previous Timber Land License holders, namely Tradewinds Forest Products LLC, the Division proposes a license extension fee in the amount of \$14,385.00 for the extension of HIH's License. The extension fee is representative of the lost interest on revenue due to inactivity on the License, and is calculated using the State's Treasury Investment Pool average yearly interest rates from 2008 to 2011. HIH has requested a payment plan option on the proposed extension fee; the Division is supportive of this request.

The Division proposes the incorporation of monthly minimum stumpage payment, into the HIH's License in the amount of \$6,800 per month. Minimum stumpage payments will begin after the Division has complete the requested improvement to the road access to stands number 8134; 8138; 10290; and 10270 and are further defined as following:

1. Minimum stumpage payments made without actual harvest of resources are eligible for credit on future obligations of harvested timber.
2. Un-credited stumpage payments are not eligible for refund in the event that HIH terminates or defaults on the License.
3. Monthly stumpage payments in excess \$6,800 shall be credited towards future monthly minimum stumpage payment requirements.

The Division will proceed with the requested road improvements following the approval and execution of a license extension and will notify HIH once work has been completed.

HIH has further requested an amendment to their License on the deadlines for the mill development requirements and believes that a tracking system for capital investments is not the appropriate method for showing accomplishments under the License. The Division agrees that additional support is needed to expand a forest products industry in Hawaii, and is currently exploring grant opportunities with various partners for structural testing and certification of Hawaiian grown wood products for local construction use. However due to how the License was procured, the Division is unable to remove the sawmill development requirements from HIH's License, thus recommends extending the mill development schedule as follows: Phase II of the mill development schedule extended through the second year of the extension (84 months) and Phase II and IV through the third year of the extension (96 months). The Division further proposes including an accomplishment reporting requirement that will allow the operator to show progress related to market and capacity building and amount of timber harvested from WTMA along with the expansion of infrastructure and equipment under the License. The accomplishment reporting should be submitted to the Division every six months, and the requirement should come into affect following the Division's completion of the requested road improvements.

The Division recommends a modification to Table 2. License sawmill development schedule to allow for the completion of the sawmill development (detailed above) as follows:

Table 2. Licensee sawmill development schedule (amended per license extension).

Item	Phase	Time Period
Band or circle head saw	II	84 months
Planer	II	<b>completed</b>
Straight line rip saw	II	84 months
End trimming chop saw	II	84 months
Four-side planer	II	84 months
Dry kiln capacity to accommodate 1,000,000 BF/yr	III	96 months
Sorting line	III	96 months
Stacking machine	III	96 months
Edger	IV	<b>completed</b>
Dry kiln capacity to accommodate 5,000,000 BF/yr	IV	96+ months
Traveling carriage head saw	IV	96+ months

The Division notes that such a modification also necessitates an amendment to License Section 10.17 whereby the deadline within which HIH would be obligated to have a mill with a 1,000,000 annual board foot processing capacity would also need to be extended to 96 months.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

In accordance with the requirements of Chapter 343, HRS, an environmental assessment was prepared and approved for the WTMA project on May 12, 1999. The License amendment and extension is a continuation of this project.

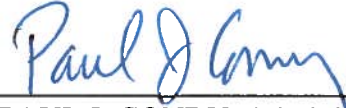
#### RECOMMENDATIONS

That the Board:

1. Extend Timber Land License No. 2007-H-01 held by Hawaii Island Hardwoods, LLC for three years, subject to an extension fee in the amount of \$14,385.00, ending September 9, 2015 with an allowed additional extension of up to two years contingent on performance under the License;
2. Amend Timber Land License No. 2007-H-01 held by Hawaii Island Hardwoods, LLC by:
  - a. Extending the deadlines for Phase II items to 84 months, and Phase III and IV items to 96 months in Table 2 License sawmill development schedule;
  - b. Extending the deadline in section 10.17 for HIH to establish a mill with a 1,000,000 annual board foot capacity to 96 months; and
  - c. Incorporating minimum stumpage payments in the amount of \$6,800.00 per month payable to the Department of Land and Natural Resources as described above.

3. That the extension and amendment of the License be subject to:
- a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson  
Board of Land and Natural Resources

Exhibits A, B and C

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE**

**TIMBER LAND LICENSE, NO. 2007-H-01**

**KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS**, the Board of Land and Natural Resources at its meetings held on September 11, 1998 and September 23, 2005, found that the public interest would be served by disposition of available commercial timber resources within the Waiakea Timber Management Area (WTMA) through a Request For Proposals (RFP) process; and

**WHEREAS**, a proposal from Hawaii Island Hardwoods, LLC., a Hawaii Limited Liability Company, whose mailing address is P.O. Box 390267, Keauhou, Hawaii 96739, was evaluated and selected through a competitive sealed proposal process; and

**WHEREAS**, the Board of Land and Natural Resources (Board), pursuant to Chapter 171-54, Hawaii Revised Statutes (HRS), may issue a Timber Land License (License).

**NOW, THEREFORE**, the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Licensor", pursuant to section 171-54, HRS, and for and in consideration of the fees to be paid and the terms, conditions, and agreements herein contained, all on the part of the Licensee to be kept, observed, and performed, does hereby grant said License to Hawaii Island Hardwoods, LLC., hereinafter referred to as the "Licensee", to enter and remove forest products of such kinds and in such amounts from timber stand numbers specified hereinafter within the State's Waiakea and Upper Waiakea Forest Reserves and more particularly identified as the Waiakea Timber Management Area (WTMA), on map attached hereto as Figure 1 and made a part hereof, hereinafter referred to as the "License Area".

The terms and conditions under which this License is issued are as follows:

**1.0 LOCATION AND PRODUCTS**

- 1.1 Sale Area and Species.** The Licensee shall be permitted to harvest and remove trees from the WTMA License Area as designated by a Logging Plan approved by the Department of Land and Natural Resources Division of Forestry and Wildlife (Department) and other conditions within this License. The forest resources to be harvested will be recorded and tracked by commercial timber stand numbers within five (5) strata or timber types, which collectively comprise approximately 1,095 acres within the WTMA (Figure 1, Table 1).

Figure 1. Timber stands included in Timber Land License to Hawaiian Island Hardwoods, LLC.

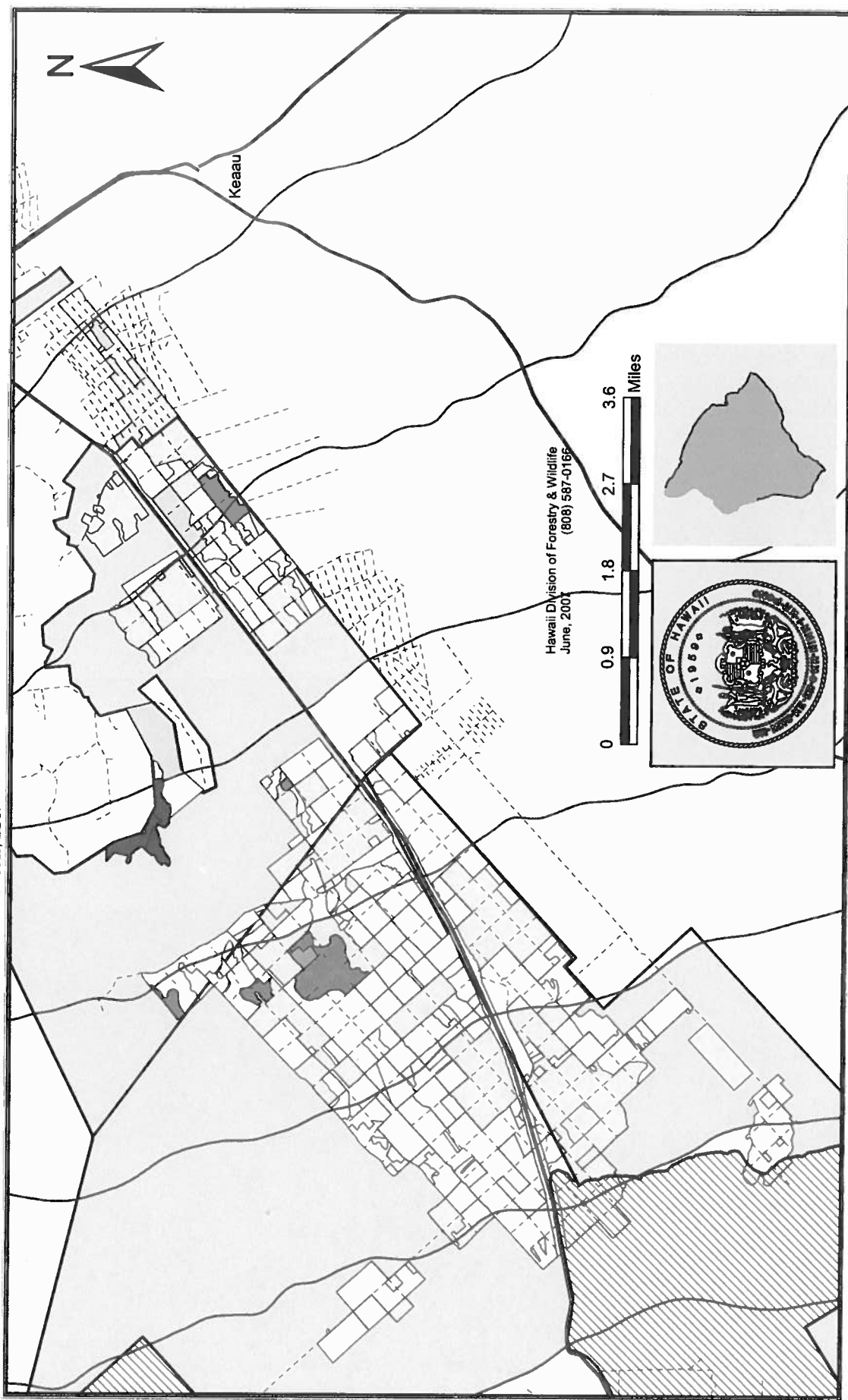


Table 1. Timber stands included in the Hawaii Island Hardwoods, LLC Timber Land License.

Timber type	Stand No.	Approximate Acres
<i>Toona ciliata</i> (Australian red cedar, or “toon”)	10070	69.2
	10303	7.2
	10401	26.1
	10452	33.1
	10560	186.4
sub-total		322.0
<i>Eucalyptus robusta</i> (swamp mahogany)	8134	38.7
	8138	57.1
	10290	30.4
sub-total		126.2
<i>Eucalyptus saligna</i> / <i>Eucalyptus grandis</i>	10002	28.4
	10050	96.5
	10130	28.1
	10142	8.3
	10270	216.9
	10411	24.4
	10420	29.6
	10490	73.9
	10591	16.7
	10592	20.9
	10630	47.3
	10651	16.3
	10740	10.4
sub-total		617.7
<i>Alnus nepalensis</i> (Nepal alder)	10463	23.7
<i>Flindersia brayleyana</i> (Queensland maple)	10021	0.3
	10232	5.5
sub-total		5.8
<b>Total acres</b>		<b>1095.4</b>

Additional stands within the WTMA may be added to this License upon mutual agreement between the Licensors and the Licensee.



- 1.2 Stand or Harvest Unit Boundaries.** Licensee shall be solely responsible for ensuring that all harvesting is done within stand or harvest unit boundaries. In many cases the Licensee should be able to determine stand or harvest unit boundaries due to changes in timber species or due to the presence of block roads within the WTMA. In any case where the Licensee is unsure, the Department, at Licensee's request, shall provide assistance marking such boundaries or block road locations. Such situations may arise particularly where timber species or forest types do not change across stand boundaries of adjacent licensees.
- 1.3 Set Asides.** No harvesting will be allowed in those areas of the WTMA under license to Tradewinds Forest Products, LLC. No harvesting will be allowed in those areas of the WTMA that have been set aside for timber research, experimental planting, education, protective buffer zones for threatened and endangered species and other government purposes without the written approval of the Department. These areas are designated on Figure 1, except for protective buffer zones for threatened and endangered species which may be added as harvest units are identified and surveys are conducted. Additional set asides may be added at a later date upon mutual agreement between the Licensor and the Licensee.
- 1.4 Timber Stand Trading.** Licensee is willing to negotiate with Tradewinds Forest Products, LLC for the potential trading of land areas or timber stands within the WTMA to aid in consolidating stand areas under license, forest types preferred by each licensee, or access issues into more continuous areas or other units. If Tradewinds Forest Products, LLC is also open to negotiation and an agreement is reached between the two licensees and the Board approves the trade, the Department shall assist with the amendments to each respective license.
- 1.5 Non-timber Forest Products.** The Licensee shall submit a non-timber forest products (NTFP) operations/harvest plan proposal to the Department no less than ninety (90) days prior to initiating timber harvesting in any timber stand or unit thereof. The NTFP operations/harvest plan proposal shall identify the NTFP, if any, the Licensee intends to harvest in the same unit. Such notices shall detail the NTFP types, units and terms of compensation to the Department for the proposed NTFP harvesting. Should the Department, for any reason, disagree with any of Licensee's proposed terms, or if the Licensee does not submit a NTFP operations/harvest plan proposal that is both timely and complete, the proposal shall be denied, and Licensor may authorize anyone other than Licensee to harvest NTFP under a Collection or Commercial Harvest Permit in that unit prior to the Licensee initiating timber harvesting activities, including the sale of said NTFP. NTFP harvesting activities shall cease two weeks prior to Licensee's scheduled timber harvest operations.

## **2.0. LICENSE TERM**

- 2.1 Term of License.** The Licensee shall have the exclusive right and privilege for a term of five (5) YEARS, commencing on September 10, 2007 and ending on September 9, 2012, both dates inclusive, or such shorter time as deemed necessary, within which to enter upon the License Area to harvest forest products in accordance with this License. At year four (4), the Licensee shall have an option to extend for up to an additional five (5) years at the end of this license. Should this option be exercised, timber stumpage prices paid to Licensor by Licensee

will be adjusted beginning in September 2012, based on the increases and decreases in a Producer Price Index as follows:

- a. Base stumpage selling prices shall be defined as those established for various species as detailed in Section 4.1, with a reference base date of June 2012.
- b. Base stumpage selling prices shall be adjusted by an amount equal to the percentage increase or decrease in the U.S. Department of Labor Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number WPU08, *provided, however, that the amounts to be paid shall never fall below the prices provided in Section 4.1.*
- c. Price adjustment calculations shall be made quarterly (not annually) on the 28<sup>th</sup> day of June, September, December and March of any given year, and shall be based on the first-published version of the previous month's index (i.e. the May, August, November, or February index, as the case may be) as compared to the index from the previous quarter.

The Licensor will not unreasonably withhold the extension of the License if the Licensee has satisfactorily met the conditions of the License.

- 2.2 **Commencement of Harvesting.** The Licensee shall commence harvest operations within twenty-eight (28) calendar days of the execution of this License. If Licensee fails to comply with this term, and no tree harvesting is conducted within ninety (90) calendar days after the execution of the License, the Board shall be entitled to terminate this License.
- 2.3 **Right of Licensor.** The Licensor reserves the right to sell or grant to others similar rights or privileges; provided, however, that the rights reserved shall not be exercised by the Licensor, or by any other licensee(s) of the Licensor in such a manner as to interfere unreasonably with the Licensee in the free use of said License Area for the purpose specified.

**3.0 VALUE-ADDED PROCESSING.** One of the Licensor's principal objectives for the timber within the License Area is to encourage forest product processing within the State of Hawaii and to ensure the highest number and quality of jobs for the residents of the State. The Licensee proposes to mill and kiln dry timber from within the License Area for dimensional lumber as well as further value adding processing efforts to convert a portion of such lumber into flooring, moldings, and other millwork products. Products will be distributed to contractors, craftsmen, cabinetry shops and retailers within the State of Hawaii, or as Licensee may find early limitations in processing capacity or as supply increases, a portion of production may be shipped to out-of-state markets.

- 3.1 **Sawmill.** The Licensee will initiate limited milling operations using an existing Wood Mizer band saw and a portable edger pursuant to Section 2.2, representing Phase I of the Licensee's processing capacity and facility development. The Licensee will complete the purchase and installation of a sawmill and associated facilities according to the following schedule, with all time periods representing months to fully operational status following the date of execution of this License.

Table 2. Licensee sawmill development schedule.

Item	Phase	Time Period
Traveling carriage head saw	II	6-12 months
Band or circle head saw	II	6-12 months
Dry kiln capacity to accommodate 1,000,000 BF/yr	II	6-12 months
Sorting line	III	9-18 months
Stacking machine	III	9-18 months
Planer	III	9-18 months
Two-saw, dual laser board edger	IV	12-48 months
Dry kiln capacity to accommodate 5,000,000 BF/yr	IV	12-48 months

All mill equipment will be either new or employ state-of-the art technology that will maximize log utilization and wood recovery. Failure to complete any Phase within the time period stated in Table 2 will be grounds for issuing a notice of default of the terms of the License. The Licensor reserves the right to modify or terminate this License if Phases II, III or IV of sawmill development are not completed by Licensee by the end of the respective time periods stated in Table 2.

### 3.2 Restrictions.

**3.2.1 Woodchips.** No woodchips will be manufactured from merchantable logs, as defined in Section 10.13, harvested within the License Area, except as a byproduct of veneer or milled dimensional lumber processing activity. Logs that are not merchantable or are not suitable for manufacturing lumber or veneer due to form, defect or species considerations may be harvested and processed as woodchips.

**3.2.1 Log exports.** No more than 2% of raw log segments harvested from the License Area shall be exported from the State of Hawaii without written approval from the Licensor.

## 4.0. METHOD AND RATE OF PAYMENT

**4.1 Stumpage prices.** Payment for tree species harvested under this License shall be based on the scaled measurement of the harvested trees at the following rates:

Table 3. Stumpage prices to be paid to Department by HIIH on a board foot (BF) basis.

<i>Eucalyptus</i> spp. (Stand Nos. 8134, 8138 or 10290):	\$ 0.15 per BF
<i>Eucalyptus</i> spp. (All other stands):	\$ 0.10 per BF
<i>Toona ciliata</i> (Skidding and hauling access to Flume Road shall be allowed):	\$ 0.53 per BF
<i>Alnus nepalensis</i> :	\$ 0.20 per BF
<i>Flindersia brayleyana</i> :	\$ 0.15 per BF

Pricing below the State minimum for *Flindersia brayleyana* is allowed due to low maple volumes secured under this license and to allow the Licensee to conduct milling and marketing experiments with this species.

- 4.2 Scaling.** All logs removed from the License Area shall be measured by weight, unless otherwise agreed to by Licensee and Licensor. Weighing shall be done at Licensee's expense at a third-party truck scale authorized by the Hawaii State Department of Agriculture. Payment shall be based on log weight multiplied by a weight-to-BF volume conversion factor. For each species, conversion factors shall be established by hand scaling a minimum of the first three (3) truckloads removed for milling and averaged to develop a volume/weight ratio. The Licensor will work with the Licensee to ensure that hand-scaled truck loads are comprised of log sizes that are representative of the source timber stands. Licensor or Licensee may periodically stipulate that additional hand scaling data be collected and averaged into the original volume/weight ratio for each species in order to strengthen volume/weight indices, or to help reflect site changes in log sizes and/or quality. Such additional scaling shall not occur more than once every thirty (30) days of active hauling for each species or otherwise by mutually agreeable frequencies.

All hand scaling will be conducted by a mutually agreed upon third party scaler. The Licensee will pay all fees for scaling services and receive a stumpage credit equivalent to fifty percent (50%) of the scaling fees from the Licensor when making the next subsequent stumpage payment.

The scaler shall obtain all weight slips and provide the Licensor (originals) and Licensee (copies) documentation of all hand scale tickets and weight slips. The Licensee will cross-reference and reconcile all weight slips against the conversion factor and License pricing for each species, and submit payments as detailed in Section 4.3. The Licensor, its agents and employees, shall at any reasonable time upon twenty-four (24) hours notice to the Licensee, have access to all books, accounts, records, and reports of the Licensee relating to the material removed from the License Area herein described for the purpose of inspection, examination, or audit.

- 4.3 Payment Method.** Payment by the Licensee to the Licensor for timber stumpage or NTFP removed will be made on a monthly basis, due by the twentieth (20<sup>th</sup>) day of each month for the preceding month's harvest activities. The Licensee shall make all payments by check payable to "The Department of Land and Natural Resources" at the following address:

Division of Forestry and Wildlife  
P.O. Box 4849  
Hilo, HI 96720

The interest rate on any and all unpaid or delinquent payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

- 4.4 Compliance Bond.** A single payment/performance bond in the amount of \$250,000 will be posted by the Licensee after License execution. The Licensee shall provide documentation of

this bond to the Department prior to commencement of any field operations by the Licensee within the WTMA.

The Logging Plan (Section 6.2) will provide the proposed silvicultural specifications and timing for each timber species or forest product regarding reforestation of harvested areas, if applicable. The Department will conduct a final site inspection within one (1) week of the date that the Licensee provides written notice to the Department that all harvesting activities relating to this License are completed. If the Department determines that final site conditions are not satisfactory, the Licensee will be notified in writing within one (1) week of the site inspection, and asked to mitigate the stated concerns.

The Licensee will maintain the compliance bond to meet the requirements of, and adhere to all terms, conditions, and covenants of this License, including:

- 4.4.1 That in case of a breach or default (Section 8.2) by the Licensee, the full amount owed the State thereof shall be paid to the State as liquidated and ascertained damages and not as a penalty.
- 4.4.2 That such instruments shall be canceled, released, and returned to the Licensee upon expiration of the term or sooner termination of the License without default then being in existence.
- 4.4.3 That the Licensee shall otherwise comply with the terms and conditions contained in this section.
- 4.5 **Other Payments.** The Licensee will be solely responsible for the payment of site preparation, maintenance, utilities, insurance and taxes as well as all permits, fees, and other levies associated with the property's entitlement, development, and operation. The Licensor will cooperate with the Licensee in obtaining permits under its jurisdiction.
- 4.6 **Insurance.** The Licensee shall procure, at its own cost and expense and keep in full force and effect throughout the term of this License, commercial general liability insurance with an insurance company or companies acceptable to the Board and licensed to do business in the State of Hawaii, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate. The policy or policies of insurance shall name the State of Hawaii as additional insured. The insurance shall cover the entire License Area. The Licensee, prior to entry and use of the License Area or within fifteen (15) calendar days after the effective date of this Land License, whichever is sooner, shall furnish the Licensor with a certificate(s) showing the policy(s) to be initially in force, and keep the certificate(s) on deposit during the entire License term, and furnish a like certificate(s) upon each renewal of the policy(s). The insurance shall not be canceled, limited in scope of coverage, or allowed to expire unless the Licensor has been given thirty (30) calendar days written notice of such intent.

The Licensor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of the Licensor, the insurance provisions in this License do not provide adequate protection for the Licensor, the Licensor may require

Licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Licensor's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change in insurance is required. The Licensor shall notify Licensee in writing of changes in the insurance requirements and Licensee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Licensor incorporating the changes within thirty (30) calendar days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Licensee's liability under this License nor to release or relieve the Licensee of the indemnification provisions and requirements of this License. Notwithstanding the policy(s) of insurance, Licensee shall be obligated for the full and total amount of any damage, injury, or loss caused by the Licensee's negligence or neglect connected with this License.

It is agreed that any insurance maintained by the Licensor will apply in excess of, and not contribute with, insurance provided by Licensee's policy(s).

## **5.0 EASEMENTS, ROADS AND ACCESS**

**5.1 Easements.** It shall be the Licensee's sole responsibility to secure and pay for easements or rights-of-way on private lands across which it is necessary to build roads to transport the forest products included in this License. The Licensor may assist the Licensee in obtaining such easements or rights-of-way.

**5.2 Road Construction and Location.** Roads shall be located in accordance with an approved Logging Plan, and in accordance with BMP's referenced in Section 6.1.

**5.2.1 Drainage.** Roads shall have culverts installed at points where drainage is blocked by fills except on temporary roads where the Administrator may substitute a requirement that the Licensee will open the drainage when logging has been completed.

**5.2.2 Turnouts.** One-lane roads shall be provided with adequate turnouts as provided in the Logging Plan.

**5.2.3 Rock Quarry.** Rock material for road construction within the WTMA will be made available to the Licensee from quarry sites within the WTMA when authorized by the Administrator. The quarry location and quarry work plan must be approved by the Administrator prior to any quarry activities being initiated. The Licensee shall be responsible for all grubbing, quarrying, stockpiling, loading, and hauling of all material from the quarry sites and will be responsible for the rehabilitation of the quarry sites as specified in the quarry work plan. Quarry rock material shall be used only on roads and landing sites within the WTMA.

**5.3 Road Maintenance.** All roads within the WTMA used by the Licensee, whether constructed by the Licensee or not, will be maintained by the Licensee at its own cost to a standard that will

permit the Licensee to remove the timber efficiently and by following the guidelines recommended in the State's Best Management Practices (Appendix A) for forestry related activities. The Licensee may use WTMA block roads (including Flume Road) needed to access timber stands under this License. The Licensee must maintain at its own cost these permanent dirt or graveled WTMA block roads by some combination of blading, shaping surface and shoulders, or applying gravel. The sole exception to this condition is the existing access road to timber stand Nos. 8134, 8138 and 10290. For the latter road, the Licensor will upgrade the road to a condition suitable for adequate logging truck access to the existing road terminus as soon as practical but no later than twenty-four (24) months following execution of this License.

Road banks shall not be undercut. Established berms shall be maintained and additional berms shall be placed where needed to protect fills. Established berms that hold water unnecessarily shall be eliminated. Clearance of timber and other vegetation on road rights-of-way must be no wider than is necessary for the installation or improvement of the road. Licensee will make frequent inspections of the main haul roads and make necessary repairs to the roads to minimize soil erosion and damage to the environment.

When block roads used to access a given area or set of timber stands are no longer needed due to completion of all logging activities for that area, the Licensee must shape and grade the crown, clean ditches, open culverts, provide cross-drainage and construct dips in a manner that leaves the block roads in a condition that equals or exceeds the condition of said roads prior to initiation of field operations.

- 5.3.1 Visual Buffers.** During initial planting efforts in the WTMA, a native forest corridor was left intact along Stainback Highway (approximately 100 feet wide on each side) for aesthetic and wildfire pre-suppression purposes. The Licensee shall not disturb this existing buffer.
- 5.3.2 Skid Roads and New Access Roads.** Location and design of skid roads or new access roads shall be detailed in the Logging Plan and approved by the Licensor prior to initiation of any field operations. All applicable permits shall be obtained by the Licensee. Appropriate safeguards, including appropriate signage and notices, liability and other road mitigation agreements will be established in cooperation with the Licensee. Appropriate traffic safety precautions shall be undertaken by the Licensee during the harvesting, removal, and transportation phase.
- 5.3.3 Closing road audit.** The Licensee will be released of any road maintenance obligations not detailed in the Forest Management Plan after completion of harvesting operations upon inspection and signing of a closing road audit by the Licensor and Licensee. The closing road audit will be held no longer than sixty (60) days after notification of completion of a harvesting unit by the Licensee and final approval of the audit will not be unreasonably withheld by the Licensor.
- 5.3.4 Signage.** Licensor will provide as well as maintain appropriate signage to identify all major roads within the License Area.

**5.3.5 Road Maintenance Fund.** The Licensor agrees to contribute one dollar (\$1.00) per ton for all logs and other forest products the Licensee transports on Stainback Highway to road maintenance through minor adjustments to stumpage prices agreed upon between Licensor and Licensee during discussion of license terms.

**5.4 Access.** All lands within the WTMA but not under license and all associated roads not currently in use will remain available to the Licensor for access to its NTFP, for gatherers and other permittees, and for other public uses and resource management activities. The Licensee shall provide a minimum of ninety (90) days notice to the Department of scheduled road closures with the exception of the first harvest unit scheduled for harvest, which may be closed with shorter notice upon written approval of the Administrator. All roads, existing or hereafter constructed within the WTMA may be used by the public when so authorized by the Administrator, provided that such use shall not interfere with the operations of the Licensee under this License.

For safety reasons during logging operations, no hunting will be allowed within one-quarter mile of the logging site. The public will not be allowed to use active logging roads during working hours; and active logging units and contiguous roads selected by the Licensor will be closed during all hours, all day. Closure will typically last about sixty (60) days. Licensee will post, maintain, and remove appropriate signs and gates. The Olaa Flume Road, Waiakea Boundary Road (leads to the quarry and farm lots), and Tree Planting Road will be kept open at all times, unless specifically closed by the Licensor and the Licensee is given a thirty (30) day written notification.

Federal, State and County officers having official duties to perform in the area served by roads built by the Licensee in carrying out the provisions of this License shall have the right to use the roads so built in carrying out such official duties.

## **6.0 HARVEST OPERATIONS**

**6.1 Best Management Practices (BMP's).** The Licensee shall adhere to the BMP's (Appendix A) in all of its operations within the WTMA. A breach of the BMP's will constitute the suspension and potential termination of this License if not remedied after thirty (30) days after written notification by the Licensor.

**6.2 Logging Plan.** The Licensee shall submit to the Licensor a Logging Plan which includes sections or details on:

- Block road maintenance scheduling
- Skid road and landing construction and maintenance plans including maps
- Harvest scheduling by stand number or block ID, including acreage estimates
- Requested road closures
- Harvesting methods
- Products to be harvested including approved NTFP
- Anticipated time frames for beginning and completing each phase



- Proposed reforestation schedule and terms, if any
- Fire plan

The Logging Plan must be submitted upon award of License, and must be updated at the beginning of every calendar quarter. Each update must be approved by the Administrator or designee before field activities detailed in the Logging Plan can be implemented within the License Area. The Logging Plan will follow the conditions and management practices prescribed in the WTMA Forest Management Plan (Appendix B), approved by the Board on September 11, 1998, and the Final Environmental Assessment for Commercial Harvesting of Forest Products and Subsequent Reforestation of the Waiakea Timber Management Area, Island of Hawaii, dated May 12, 1999 (Appendix C).

- 6.3 Utilization Practices.** All merchantable logs will be harvested and utilized to their respective minimum top diameters as defined in Section 10.13. All stumps shall be cut so as to cause the least waste practicable and shall not exceed, on the side adjacent to the highest ground, a height of twelve (12) inches. Branches and tree tops less than four (4) inches in diameter may be harvested or treated as logging debris.
- 6.4 Treatment of Logging Debris.** Upon completing timber harvesting activities within a given unit or Stand, the Licensee shall leave all slash and logging debris within thirty-six (36) inches of the ground surface by lopping, smashing or other method mutually agreeable to the Licensor and Licensee. Piling of logging debris in windrows or piles shall not be permitted.
- 6.5 Damage to Residual Stands.** All harvest and logging debris treatment operations of the Licensee shall be so conducted as to minimize damage to residual stands.
- 6.6 Damage to Intermittent Stream Courses.** All operations of the Licensee under this License shall be so conducted as to minimize damage to intermittent stream courses within the WTMA. Intermittent stream courses in the WTMA shall be cleared of all slash, logs and other logging debris resulting from operations under this License which may affect the natural flow of the stream. Licensee will be responsible for all costs and repairs for remedial actions.
- 6.7 Soil Erosion and Damage to Soil.** The Licensee shall take all practical precautions to minimize soil erosion and damage to the soil during harvest operations including, but not limited to:
- Prevent the gulying of roads, ditches, skid trails, and landings.
  - Suspend Operations when ground conditions are such that excessive damage will result to the soil. To avoid such damage the Administrator may suspend operations in whole or in part for such period or periods as are necessary, without liability for any loss of damage.
  - Within two (2) weeks following completion of harvesting operation within each unit or stand, perform soil erosion control work following harvest operations within the License Area, including grading and construction of cross drainage and water spreading ditches on all landings and skid trails as necessary to prevent soil erosion.

**6.8 Waste Disposal.** No waste oil, other waste liquids, chemicals, litter, scrap, and abandoned equipment will be disposed within the WTMA.

**6.9 Fire prevention and control**

**6.9.1 Fire plan.** The Licensee will set forth in detail in the Logging Plan needed actions and responsibilities for fire prevention, control, and extinguishment of fires in the License Area and immediate vicinity to be approved by the Administrator before commencing any harvesting or road construction activities.

**6.9.2 Fire suppression.** The Licensee will take all reasonable precautions to prevent fires by its operations, employees, sub-contractors and their employees. During the period of this License, the Licensee shall, both independently and in cooperation with the Department, take all reasonable and practicable actions to suppress fires caused by its operations, employees, sub-contractors and their employees. Independent initial fire suppression action by the Licensee on such fires shall be immediate and shall include the use of all manpower and suitable equipment at its disposal. Such action shall continue until the fire is brought under control or the Licensee and its manpower and equipment are released by the Administrator. All roads and trails, designated by the Administrator as needed for fire protection or other purposes, shall be kept free of logs or logging debris resulting from operations under this License. All such roads and trails damaged by such operations shall be promptly restored or repaired.

**6.10 Native Forest Interface Zone.** To minimize disturbance to native vegetation and prevent the spread of non-native invasive weeds, a 150-foot protective buffer zone may be identified by the Licensor within the planted non-native forest areas adjacent to high quality native forest. Specific management actions to reduce impacts of harvesting and the spread on non-native invasive weeds will be specified in the Logging Plan for these areas.

**6.11 Power washing.** Once prior to entering and once prior leaving the WTMA, all heavy equipment operating within the WTMA (excluding pre-existing block road grades) shall be power washed with water to prevent the spread of exotic seeds and plants. This criteria shall not apply to equipment being transferred from one block to another within the WTMA.

**6.12 Protection of Existing Improvements.** In all phases of construction and other operations under this License, the Licensee shall take precautions to protect, insofar as practicable, all utility lines, ditches, fences and other improvements; and, if any such improvements are damaged by its operations, it shall restore or repair them or cause them to be restored or repaired, promptly and at the Licensee's expense.

**6.13 Conformity with Laws, Rules and Regulations, etc.** The Licensee shall, during the whole of the term of this License, maintain all areas in which operations are conducted in a sanitary and orderly condition satisfactory to the Licensor and in conformity with the Public Health Regulations of the Department of Health and with the applicable laws, ordinances, rules and regulations of the federal, State and local governments, and the approved Environmental Assessment.

The Licensee shall observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal or county governments now in force or which may hereinafter be in force, affecting this License or the License Area.

- 6.14 Hazardous Wastes.** The Licensee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Licensee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the License Area any such materials except for use in the ordinary course of Licensee's business, and then only after written notice is given to Licensor of the identity of such materials and upon Licensor's consent which consent may be withheld at Licensor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Licensee, then the Licensee shall be responsible for the reasonable costs thereof. In addition, Licensee shall execute affidavits, representations and the like from, time to time at Licensor's request concerning Licensee's best knowledge and belief regarding the presence of hazardous materials on the License Area placed or released by Licensee.

The Licensee agrees to indemnify, defend, and hold Licensor harmless, from any damages and claims resulting from the release of hazardous materials on the License Area occurring while Licensee is in possession, or elsewhere if caused by Licensee or persons acting under Licensee. These covenants shall survive the expiration or earlier termination of this License.

For the purpose of this License "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

## **7.0 REFORESTATION OF HARVESTED AREAS**

- 7.1 Reforestation.** Reforestation of harvested units or stands shall be the responsibility of the Department within the License Area. Per the Administrator's discretion, the Licensee may be asked to submit a proposal for reforestation costs in any or all stands harvested within the License Area by the Licensee. Payment to the Licensee for reforestation shall be a stumpage credit to the Licensee if still actively harvesting in the License Area. Reforestation specifications will be submitted as an addendum to the Logging Plan prior to reforestation operations. The Administrator will provide the Licensee written notice as to the acceptance or rejection of the Licensee's reforestation proposal. The Administrator reserves the right to request reasonable changes in Licensee's reforestation practices, provided that such requests be based on the best available science. In the event that Licensee fails to comply with such reasonable requests, Licensor may, on ninety (90) days written notice, assume responsibility for reforestation.
- 7.2 Reforestation closing audit.** After completing any agreed upon reforestation work, the Licensee will be released of all reforestation obligations after an inspection and signing of a

reforestation closing audit has determined that a minimum stocking level of seventy-five percent (75%) has been achieved after one (1) year.

- 7.3 Seedlings.** For any reforestation work to be conducted by the Licensee, the Licensor retains the right to select or specify seed or germplasm source, and grow seedlings at its own nurseries for replanting efforts.

## **8.0 SUSPENSION OR TERMINATION**

- 8.1 Suspension of Contract.** All or any part of the harvesting operations under this License may be suspended by the Administrator, by notice in writing, for violation of any of the terms, conditions and covenant herein contained, provided that written notice was given the Licensee and thirty (30) calendar days were given to correct such violation.
- 8.2 Breach.** Time is of the essence in this License. In the event that the Licensee shall fail to make the said payment or any part thereof at the times and in the manner aforesaid; if the Licensee fails to observe and perform any of the covenants, terms, restrictions and conditions contained in this License and on its part to be observed and performed; if the Licensee shall become bankrupt, or shall abandon the License Area; or if this License or the License Area are attached or taken by operation of law; and this failure continues for a period of more than sixty (60) days after delivery by the Licensor of a written notice of breach or default, by personal service, registered mail, or certified mail to the Licensee at its last known address and to each mortgagee or holder of record having a security interest in the License Area, the Licensor may, subject to the provisions of Section 171-21, HRS, at once re-enter the License Area, or any part of it, and upon or without the entry, at its option, terminate this License without prejudice to any other remedy or right of action for arrearage of payments or for any preceding or other breach of contract; furthermore Licensor shall retain all amounts paid in advance to be applied to any damages.
- 8.3 Termination at Licensee Request.** Should at any time during the term of this License, the Licensee request termination of the License and the Board agrees to terminate the License, the Licensee shall be liable for all damages and debts incurred up to such time. Upon termination, abandonment, or expiration of this License, the Licensee shall not be relieved of any claims or demands accrued, including claims for property damage, personal injury, or death, caused by any act or omission of the Licensee, or for any breach of the terms and conditions of this License.
- 8.4 Excuse for abnormal interruption.** Licensee shall not be in default by reason of any failure in performance of this License in accordance with its terms and conditions, including any failure by the Licensee to make progress in the performance hereunder which endangers such performance, if the Licensee has notified the Administrator within fifteen (15) days after the cause of the delay and the failure arises out of abnormal interruptions. Upon request of the Licensee, the Department shall ascertain the facts and extent of such failure, and, if the Administrator determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Licensee's progress and performance would have met the terms and conditions of the License, the License shall be revised accordingly, subject to Board approval.
- 8.5 Disputes.** In the event of impasse or an adverse final decision concerning a claim or any matter in dispute under the License, the Chairperson shall resolve the dispute. If the Chairperson

cannot resolve the dispute to the satisfaction of either party, then either party may submit the matter to mediation by written notice to the other party. The notice shall briefly summarize the matters in dispute, state the last position taken by each party, name the principal persons with knowledge of the matter and identify the License provisions, statutes, or regulations believed to be pertinent. Notice shall be given as soon as practicable after impasse or an adverse final decision, but not later than ten (10) days after impasse, mailing or delivery of a final decision. The mediator shall be mutually selected and the costs of mediation shall be shared equally. Each party shall otherwise bear its own costs.

## **9.0 ADDITIONAL LICENSE PROVISIONS**

- 9.1 Confidentiality and Availability of Records.** The State agrees to treat any information concerning Hawaii Island Hardwoods LLC, its business activities, financial and other information related thereto, including without limitation, its products, customers and similar information, as confidential. The State shall consider all such information as proprietary property of Hawaii Island Hardwoods LLC and agrees to take reasonable precautions to preserve its confidentiality. Prior to providing any such information to third parties, permission must be obtained from Hawaii Island Hardwoods LLC and such third party must sign an agreement that they understand its nature and will treat such information in accordance with this Paragraph.

Confidential material does not include information that is or becomes generally available to the public other than as a result of a disclosure by or through the State, or becomes available to the State on a non-confidential basis from a source not known by the State to be bound by a confidentiality agreement with, or other legal fiduciary obligations of confidentiality to, any other persons.

- 9.2 Independent Contractor.** In the performance of services required under this License, the Licensee is an "independent contractor" with the authority and responsibility to control and direct the performance and details of the work and services required under this License, including work conducted by sub-contractors. However, the State shall have a general right to inspect work in progress to determine whether, in the State's opinion, the services are being performed by the Licensee in compliance with this License.
- 9.3 Covenant Against Discrimination.** The use and enjoyment of the License Area shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immuno-deficiency virus) infection. No person performing work under this License, including any subcontractor, employee, or agent of the Licensee, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 9.4 Indemnity.** The Licensee shall indemnify, defend, and hold the Licensor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part, of Licensee relating to Licensee's use, occupancy, maintenance, or enjoyment of the License Area; 2) any failure on the part of the Licensee to maintain the License Area, and including any accident, fire, or nuisance growing out of or caused by any failure on the part of Licensee to maintain any of Licensee's equipment within the License Area in a safe condition;; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Licensee's non-observance or non-performance of any of the terms, covenants,

and conditions of this License or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

In case the Licensor shall, without any fault on its part, be made a party to any litigation commenced by or against the Licensee (other than condemnation proceedings), the Licensee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Licensor; furthermore, the Licensee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Licensor in enforcing the terms and conditions of this License, in recovering possession of the License Area, or in the collection of delinquent payments, taxes, and any and all other charges.

- 9.5 Responsibility.** The Licensee shall be responsible for the accuracy, completeness, and adequacy of the Licensee's performance under this License. Furthermore, the Licensee intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Licensee's employees and agents, and to any individual not a party to this License, for all loss, damage, or injury caused by the Licensee, or the Licensee's employees or agents in the course of their employment.
- 9.6 Taxes and Fees.** The Licensee shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the Licensee by the reason of this License, including but not limited to (i) income taxes, (ii) employment related fees and assessments, and taxes, and (iii) general excise taxes. The Licensee also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this License.
- 9.7 General Excise Tax License.** The Licensee shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The Licensee shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue code of 1986, as amended, against the Licensee have been paid.
- 9.8 Assignment.** If the Licensee is a partnership, joint venture or corporation, the sale or transfer of twenty (20) percent or more of ownership interest in Licensee whether by sale, dissolution, merger or any other means shall be deemed a transfer for purposes of this paragraph and subject to the right of the Licensor to terminate this License effective of the date of sale or transfer.
- 9.9 Entire Agreement.** This written agreement constitutes the entire agreement of the parties and all covenant, promises, representations and agreements existing are contained herein, and shall be binding upon, apply and inure to the benefit of the successors and assigns respectively of the Licensee and the Licensor.
- 9.10 Representations.** Licensee agrees that it has executed this Agreement as a result of its own inspection of the forest products the subject hereof, and the License Area herein described and not as a result of any representation made by the Licensor or its employees or agents, as to absolute quantity, quality, value or accessibility of timber or logging conditions on any of the areas covered by this Agreement or the commercial feasibility of such timber cutting operations or otherwise.

**9.11 Community Liaison.** Licensee will designate a community liaison within ninety (90) calendar days of License signing to meet with local community members and respond to their questions and concerns for the term of this License.

**9.12 Severability.** Each provision of this License is severable from any and all other provisions of this License. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

**10.0 DEFINITIONS.** The words and terms as used in this License shall be defined and interpreted, unless a different meaning clearly appears from the context, as follows:

**10.1 Administrator** - The Administrator of the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii, or successor, including those designated to act on the Administrator's behalf.

**10.2 Abnormal Interruption** - Delays caused by acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

**10.3 Agreement** - Same as Timber Land License or License.

**10.4 BMPs** - Best Management Practices which were developed for Hawaii and approved by the Board on 10 October 1997, found on the web at:  
[http://www.state.hi.us/dlnr/dofaw/pubs/BMPs\\_bestmanagement.pdf](http://www.state.hi.us/dlnr/dofaw/pubs/BMPs_bestmanagement.pdf)

**10.5 Board** - The Board of Land and Natural Resources of the State of Hawaii or its successor.

**10.6 Board Foot** - A unit for measuring wood volume in a tree, log, or board. A board foot is commonly 1 inch thick, 12 inches long and 12 inches wide.

**10.7 Chairperson** - Chairperson of the Board of Land and Natural Resources or the Chairperson's successor.

**10.8 Department** - Department of Land and Natural Resources of the State of Hawaii or its successor.

**10.9 Harvest** - To cut standing live trees, broken trees, wind-thrown trees and to remove wood, bark, and other forest products or materials from a forest.

**10.10 Harvest Stands** - Stands that contain currently merchantable trees and as identified in Table 1.

**10.11 Licensee** - Hawaii Island Hardwoods, LLC, its successors and permitted assigns.

**10.12 Licensor** - The State of Hawaii.

**10.13 Merchantable logs** - All logs that are equal to or longer than ten (10) feet in length and have a small-end diameter equal to or larger than ten (10) inches outside-bark. Logs that fail to meet

this criteria or are not suitable for manufacturing lumber or veneer due to form, defect or species considerations may be harvested and processed as woodchips.

**10.14 Native Forest Interface Zone** - A 150 foot strip established within the planted forest (adjacent to high quality native forest) to prevent the spread of non-native invasive plant species into the native forest.

**10.15 Non-Timber Forest Products** – Forest resources harvested for personal or commercial use including but not limited to tree ferns, maile, seed, fruit etc.

**10.16 Reforestation** - To cause, either through planting and/or other silvicultural techniques, the regeneration of a forest.

**10.17 Sawmill** – At a minimum, a sawmill and lumber kiln-drying facility capable of processing at least 1,000,000 board feet of lumber annually within sixteen (16) months, and subsequently 5,000,000 board feet of lumber annually within four (4) years of execution of this License, respectively.

**10.18 Stand** - A unit of planted forest trees as delineated by roads, species changes, age differences, stocking level, tree quality or other criteria.

**10.19 Waialakea Timber Management Area** - An area for which a management plan has been written and approved by the Board.

**11.0 RESERVATIONS.** The State reserves and saves unto itself, in perpetuity, all historic property, minerals, and surface and ground waters appurtenant to the premises herein described and that in connection therewith, the State shall have the right to enter said premises, protect or recover historic property, sever and remove minerals, or to develop, capture, divert, and impound water.



IN WITNESS WHEREOF, the STATE OF HAWAII, the Licensor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 10<sup>TH</sup> day of September, 2007, the Licensee herein, has caused these presents to be duly executed this 28<sup>TH</sup> day of August, 2007.

STATE OF HAWAII

By

Chairperson

Board of Land and Natural Resources

LICENSOR

Approved by the  
Board of Land and Natural Resources  
at its meeting held on June 22, 2007.

APPROVED AS TO FORM:

Deputy Attorney General

Dated:

August 31, 2007

HAWAII ISLAND HARDWOODS, LLC

By

Its

LICENSEE

STATE OF HAWAII

COUNTY of Hawaii

) SS

On this 28<sup>th</sup> day of August, 2007, before me personally appeared James E. Quinn and \_\_\_\_\_ person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Notary Public, State of Hawaii

My commission expires:

Barbara A. Welsh  
Expiration Date: May 18, 2011

Company Resolution  
Hawaii Island Hardwoods LLC

We, the Member Managers of Hawaii Island Hardwoods LLC, a Hawaii limited liability company, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Member Managers of said company, at its meeting duly called and held by telephone on the 10th day of August, 2007, at which a quorum was present and acting throughout; and that said resolution has not been modified or rescinded and continues in full force and effect:

“RESOLVED that any individual at the time holding the position of Member Manager is, hereby, authorized to execute on behalf of the Company any bid, proposal or contract for the sale or rental of the products of the Company or for services to be performed by the Company, and to execute any bond required by any such bid, proposal or contract with the United States Government or the State of Hawaii, or the County of Hawaii or any County or Municipal government of said State, or any department or sub-division of any of them.”

IN WITNESS WHEREOF, We have, hereunto set our hands of said Company effective this 10<sup>th</sup> day of August, 2007.

Eric Bello  
Member Manager:

Eric Bello

James Pappas  
Member Manager:

James Pappas

James Quinn:  
Member Manager:

James Quinn

Kent Untermann  
Member Manager:

Kent Untermann

**SECOND AMENDMENT  
OF  
TIMBER LAND LICENSE NO. 2007-H-01**

This Second Amendment made and entered into this 14<sup>TH</sup> day of DECEMBER, 2009, by and between the State of Hawaii, by its Board of Land and Natural Resources ("Licensor") and Hawaii Island Hardwoods, LLC, a Hawaii limited liability company, located at P.O. Box 390267, Keauhou, Hawaii 96739 ("Licensee") relates to that certain Timber Land License No. 2007-H-01 between Licensor and Licensee dated September 10, 2007, covering timber harvest and replanting activities in the State's Waiakea Timber Management Area of the island of Hawaii (the "TLL"). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the TLL.

**RECITALS**

WHEREAS, the TLL was amended in part on December 10, 2008;

WHEREAS, Licensee desires to amend in part for a second time certain provisions of the TLL; and

WHEREAS, the State of Hawaii, Board of Land and Natural Resources, at its meeting held on October 23, 2009, approved certain amendments to the TLL to allow for the extension of time for Licensee to meet certain deadlines and Bond requirements, and to amend certain road upgrade responsibilities, set forth in the TLL.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree to amend the TLL as provided hereunder.

1. **Amend Time Periods for Sawmill Development Phases.** Section 3, Table 2, License sawmill development schedule, of the TLL, as amended on December 10, 2008, is hereby deleted in its entirety and replaced with the following:

"Table 2. Licensee sawmill development schedule. [Note: Start date was 9/10/07]

Item	Phase	Time Period
Band or circle head saw	II	24 months
Planer	II	36 months
Straight line rip saw	II	36 months
End trimming chop saw	II	36 months
Four-sided planer	II	36 months
Dry kiln capacity to accommodate 1,000,000 BF/yr	III	48 months
Sorting line	III	48 months
Stacking machine	III	48 months
Five-head moulder	III	48 months
Two-saw, dual laser board edger	IV	60+ months*
Dry kiln capacity to accommodate 5,000,000 BF/yr	IV	60+ months*
Traveling carriage head saw	IV	60+ months*

\*Phase IV items may come on-line within 60 months or thereafter subject to potential extension of the License term."

2. **Amend TLL Section 4.4 – Compliance Bond.** Paragraph no. 1 of section 4.4 of the TLL is hereby deleted in its entirety and replaced with the following:

“The Bond requirement for HIH shall be scaled according to the size of HIH’s active harvesting operations within the WTMA as follows:

- a. For 0-20 acres - \$50,000
- b. For 21-40 acres - \$100,000
- c. For 41-60 acres - \$150,000
- d. For 61-80 acres - \$200,000
- e. For 81 acres or more - \$250,000

In addition, HIH shall be required to pass a harvest area closeout audit by the Department prior to HIH proceeding to new or additional harvest areas. Should HIH not pass such an audit, the Department shall inform HIH in writing of what remediation is required. Upon receipt of such notice, HIH shall have thirty (30) days to remedy the specified site remediation items. Failure of HIH to remedy the remediation items in a manner satisfactory to the Department shall trigger License Section 8.2 “Breach,” and if the breach process leads to License termination HIH shall forfeit the Compliance Bond.”

Section 4.4 paragraph nos. 2 & 3, as well as Sections 4.4.1, 4.4.2 and 4.4.3 of the TLL to remain the same.

3. **Amend TLL Section 5.3 – Road Maintenance.** The last sentence of paragraph no. 1 of the TLL is hereby deleted in its entirety and replaced with the following:

“For the latter road, the Licensor will upgrade the road to a condition suitable for adequate logging truck access to the existing road terminus within 180 days after receiving written notice from HIH regarding their intent to harvest in timber stands 8134, 8138 and 10290. If the Department decides, in its sole and absolute discretion, that it is unwilling or unable to perform the maintenance and upgrading of this one (1) road, then; (a) HIH will be notified of the same in writing within thirty (30) days of the Department receiving HIH’s intent to harvest notification; (b) HIH shall become responsible for maintenance and upgrade work for the aforementioned road segment; and (c) as compensation, the stumpage pricing basis paid by HIH to the Department for timber harvested from timber stands 8134, 8138 and 10290 which are accessed by this road shall be reduced by 33%.”

4. **Amend TLL Section 10.17 - Definition of "Sawmill".** Section 10.17 of the TLL is amended to read as follows:

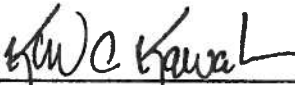
**"Sawmill** - At a minimum, a sawmill and lumber kiln-drying facility capable of processing at least 1,000,000 board feet of lumber annually within forty-eight (48) months, and subsequently 5,000,000 board feet of lumber annually within four (4) years of execution of this License, respectively."

5. **General.** Except as set forth in this Second Amendment, the TLL, as previously approved and amended, shall remain in full force and effect. This Second Amendment may be executed in two or more counterparts, which together shall constitute one instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Second Amendment of Timber Land License 2007-H-01 to be executed by their duly authorized representatives as of the date first written above.

Approved by the Board of  
Land and Natural Resources  
at its meeting held on October 23, 2009


**STATE OF HAWAII (Licensor)**

  
\_\_\_\_\_  
By: Laura H. Thielen  
Chairperson  
Board of Land and Natural Resources

**HAWAII ISLAND HARDWOODS, LLC  
(Licensee)**

  
\_\_\_\_\_  
By: James E. Quinn  
Member Manager

Approved as to form:

  
\_\_\_\_\_  
Deputy Attorney General  
Dated: December 7, 2009



**Hawaii Island Hardwoods LLC**

P.O. Box 390267 • Keauhou, HI 96739 • Office: 808 331 8363 • Fax: 808 331 0778

<http://www.hawaiiislandhardwoods.com>

April 27, 2012

Paul J. Conry  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl St  
Honolulu, HI 96813

Dear Paul,

I am writing to request a five year extension on our license No. 2007-14-01. Hawaii Island Hardwoods LLC has harvested over 50,000 board feet of timber from the Waiakea Timber Management Area (WTMA) since the award of our license. Weak markets and economies have greatly impacted our needs for additional timber for the last two years.

Our company has, however, made significant strides over the last few years in gaining market acceptance for Eucalyptus Robusta, Toona Ciliata (Toon), Nepal Alder and Tropical Ash. The Toon and the Alder came from the WTMA. Our license also includes Robusta, Eucalyptus Grandis / Saligna, Queensland Maple, and some Tropical Ash. We are seeing an increasing demand in Hawaii and on the mainland for Robusta, Ash and Toon. We have not yet harvested any of the Grandis and that will need to be a subject for considerable market development in the future.

Our license with the State has evolved into a tracking system for capital investments. We believe that this is totally backwards to what really needs to be emphasized. The primary emphasis needs to be on the market. This means, in particular, the marketing of introduced species such as are represented in License 2007-14-01. Those species are Eucalyptus Grandis, Eucalyptus Robusta, Toona Ciliata (Toon), Nepal Alder, Topical Ash and Queensland Maple. A far more important issue than tracking facilities is the establishment of acceptance within our own state and in other markets for these species. None of the eucalypts have ever achieved certification for structural applications. Robusta, Saligna and Grandis should be qualified for use in posts, beams and joists. We should try to gain acceptance for Ohia structural posts without having to have steel rods installed in center bored holes. Establishing acceptance of locally grown wood species is critical to companies such as ours and it is critical to the State. We are appealing to the State of Hawaii to help the industry achieve the acceptance of these woods in State and private projects and to help gain approval of locally grown species in county planning departments.

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Since our last review with the Board of Land and Natural Resources we have relocated from our original site in Pepe'ekeo and we continue to operate two small sawmills, one edger, three forklifts, a skidder, two flat bed trucks, a dry kiln, a planer, a rip saw, and a chop saw. Our site in Kea'au also includes improvements including warehouse, planer mill addition and storage containers. The owners of HIH have invested over \$1,500,000 in the company including \$500,000 in equipment, and at least \$300,000 in product and market development, and we currently carry approximately \$300,000 in inventories and we provide direct and indirect employment to at least three people. Our annual sales have averaged over \$300,000 over the last three years. The HIH customer list includes over 225 companies, individuals and government agencies. Much of our sales activity in the last couple of years has involved not only Robusta and Toon but many other island grown species including Koa, Ohia, Monkey Pod, Mango, Eucalyptus Torelliana and Albizia. Even with all of this, an average sales volume of \$300,000 is not sufficient for us to achieve profitability. Without the adequate sales and profitability we are unable to justify additional capitalization that would achieve better efficiencies. The next steps for the company are to broaden our sales on the mainland.

We are in negotiations with several mainland companies on strategies that would allow us to move many times the volume that we have been able to move in the past. To do this we will need to invest in improved lumber processing capacity. The focus is primarily on E. Robusta but there is a chance of moving some E. Grandis if the color and character of the wood is acceptable. It is going to be quite important for us to be able to consummate our new strategies for mainland sales by having the assurance of adequate timber supplies under contract or under license.

We anticipate harvesting in the Waiakea Uka Robusta stand which is in our license by late 2012. Our license calls for two options on the Robusta. One is if we construct the access road and the other is if DOFAW does the access road. We would like to exercise the second option when the State is in a position to improve the access.

Respectfully submitted:

  
Authorized Signature: